IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

Crl.MC.No. 3352 of 2007()

AGAINST THE ORDER IN ST NO.809/2006 of SPECIAL J.F.C.M MARAD CASES, KOZHIKODE

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PETITIONER: PETITIONER/ACCUSED

K.ASHRAF, PULPARAMBIL HOUSE
MEEMBALAKUNNU, KOTTOLI,KOZHIKODE.

BY ADV. SRI.K.PRAVEEN KUMAR

RESPONDENTS: COMPLAINANT

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1. ABDUL GAFOOR, U.K.
S/O. KHADERKUTTY.P.K.
"HANNA" BEHIND M.M.HOSPITAL
EAST ROAD, KOYILANDY,
KOZHIKODE.

2. STATE REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3352 of 2007

Dated this the 2nd day of November 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. The matter stands posted for judgment to 5/11/2007 and the petitioner has rushed to this court with this petition today. The petitioner claims to be aggrieved by Annexure II order. That order was passed on an application filed by the petitioner to forward two cheques involved in the case to the expert for comparison of handwriting.

2. The signatures in the cheque are admitted. That the cheques are drawn on an account maintained by the petitioner is also not disputed. That the cheques have been handed over by the petitioner to the complainant is again not disputed. The petitioner raises a contention that the cheques were not issued for the due discharge of any legally enforcible debt or liability but was issued only as security in a broker transaction in which if the deal were completed the complainant would have been entitled for certain amounts. An amount of Rs.10,50,000/- is covered by the two cheques in question.

3. In the course of the trial, the complainant admitted that the handwriting in the cheques where his name is entered, is his. At the fag end of the trial, the petitioner wanted the cheques to be signed to the expert for comparison. The learned Magistrate, by the impugned order, rejected the said prayer holding that the learned Magistrate does not see any satisfactory reason to invoke the discretion under Section 254(2) Cr.P.C to send the cheques to the expert.

4. On the question of law, there is no dispute. It is trite that any and every request to send the cheque to the expert need not be entertained by the learned Magistrate. The learned Magistrate has a real, reasonable and effective discretion under Section 254(2) Cr.P.C to decide whether the cheque must be sent to the expert.

5. I must alertly remind myself of the nature, quality and contours of the jurisdiction which I am called upon to exercise. It is the jurisdiction under Section 482 Cr.P.C which is sought to be invoked. It is by now trite that sufficient, compelling and exceptional reasons must be shown to exist to justify the invocation of such extraordinary inherent jurisdiction. Such jurisdiction is certainly not to be invoked as a matter of course.

6. The law frowns upon challenge against interlocutory orders raised during the pendency of the proceedings. This

policy of the law is well reflected in Section 397(2) Cr.P.C which proscribes revisional challenge against interlocutory orders. Not that this court does not have jurisdictional competence in an appropriate case to invoke the extraordinary inherent jurisdiction even in a case where the revisional challenge is not permissible, but certainly satisfactory, compelling and exceptional reasons must be shown to exist to justify the invocation of such powers.

7. I have heard the learned counsel for the petitioner at some length. I am not at all persuaded that this request to invoke powers under Section 482 Cr.P.C at this eleventh hour would be justified in the facts and circumstances of this case.

8. In the result, this Criminal Miscellaneous Case is dismissed. I would like to clarify that I have not intended to express any final opinion on merits on the challenge raised against the impugned order. The petitioner's liberty to challenge that order, if the same be necessary along with the final order to be passed by the learned Magistrate, shall remain unfettered. I choose only to take the view that the extraordinary inherent jurisdiction under Section 482 Cr.P.C need not be invoked at the present stage.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007